THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA	:	CRIMINAL ACTION
	:	
	:	
v.	:	05-032-01
	:	
ANGEL MEJIA	:	

MEMORANDUM AND ORDER

Juan R. Sánchez, J. **October 6, 2005**

Angel Mejia asks to withdraw his guilty plea pursuant to Federal Rule of Criminal Procedure 11(d). The Government argues Mejia has failed to meet his burden to demonstrate a fair and just reason for the withdrawal as required by Rule 11(d). After an evidentiary hearing, this Court concludes Mejia has failed to show a fair and just reason to withdraw his guilty plea and will deny Mejia's motion.

FACTS

On October 11, 2004, Mejia and two co-conspirators, Alexis Villegas and Jose Santiago, were arrested for kidnapping Carlos Correa to compel Correa's parents to pay a one million dollar ransom. On April 28, 2004,[1] a federal grand jury indicted Mejia on one count of conspiracy to commit hostage taking, in violation of 18 U.S.C. § 1203(a), one count of hostage taking, in violation of 18 U.S.C. § 1203(a), two counts of assaulting, resisting, and impeding federal agents, in violation of 18 U.S.C. § 111, two counts of attempted murder of a federal employee, in violation of 18 U.S.C. § 1114, two counts of using a firearm during and in relation to a crime of violence, in violation of

[1] This date represents the superceding indictment. The original indictment was issued on January 20, 2005.

18 U.S.C. § 924(c), two counts of aiding and abetting, in violation of 18 U.S.C. § 2, and one count of being an alien in possession of a firearm, in violation of 18 U.S.C. § 922(g)(5)(A). The indictment further charged Mejia with forfeiture pursuant to 18 U.S.C. § 924(d) and 28 U.S.C. § 2461(c).

As part of his Guilty Plea Agreement, Mejia agreed to plead guilty to all the charges and to not contest the forfeiture. (Guilty Plea Agreement ¶ 1.) Mejia also claimed he understood the statutory maximum and minimum sentences applicable, agreed to three stipulations regarding the sentence ranges, and recognized the Court was not bound by those stipulations.[2] (*Id.* at 3-4.) The Agreement explicitly stated Mejia "is satisfied with the legal representation provided by [his] attorney; the defendant and his lawyer have fully discussed this plea agreement; and the defendant is agreeing to plead guilty because the defendant admits that he is guilty." (*Id.* at 6.)

On June 20, 2005, this Court accepted Mejia's guilty plea after an extensive colloquy under oath. In the course of the colloquy, Mejia stated he was competent to plead guilty and his plea was voluntary, knowing, and intelligent.[3] Specifically, the court ensured Mejia understood the court's questions and statements through the interpreter and did not suffer from any mental illness or physical disabilities that would hinder his ability to comprehend. (Change of Plea Hr'g Tr. at 6-7.) Mejia affirmed his attorney "reviewed the charges with [him], and discussed with [him] any potential responses that [he] may have, or defense that [he] may have, to those charges; as well as

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[2]The Government and Mejia stipulated: (1) neither would seek an upward or a downward departure from the Sentencing Guidelines; (2) Defendant had demonstrated acceptance of responsibility for his offense; and (3) Defendant had assisted authorities in the investigation and prosecution of his own misconduct. (Guilty Plea Agreement at ¶¶4-5.)

[3]Because Mejia does not read, write or speak the English language, the entire colloquy was conducted through a Spanish-speaking interpreter who was accepted without objection by both parties. (Change of Plea Hr'g Tr. at 3.)2

reviewed with [him] the information the Government has in their possession to prove these charges beyond a reasonable doubt." (*Id.* at 9.) After this Court carefully reviewed each of the charges and its sentencing range, Mejia still expressed his desire to plead guilty in light of the maximum penalties he faced. (*Id*. at 14.)

The Assistant United States Attorney (AUSA) recounted the facts which the Government intended to prove at trial and Mejia admitted the facts and his guilt. (*Id.* at 15-17, 17-18). Mejia confirmed his understanding of the terms and the fundamental rights he would give up as outlined by the AUSA and further explained in detail by the Court. (*Id.* at 20-29.) The Court reviewed each element of the charged offenses, and Mejia stated he understood the government's burden of proof. (*Id.* at 35-38.) Mejia stated his "decision to plead guilty [was] made of [his] own free will" and was his own idea. (*Id*. at 33, 34). He also stated under oath nobody threatened him or promised him anything to plead guilty and he felt no pressure to plead guilty. (*Id.* at 33-34.) This Court found Mejia's plea was "knowingly and voluntarily made" and accepted Mejia's guilty plea to each charge (*Id*. at 40-43).

Mejia was scheduled for sentencing on October 3, 2005. Five days prior to the sentencing hearing, however, Mejia filed a motion to withdraw his guilty plea. On the date scheduled for sentencing, this Court instead heard evidence regarding the validity of Defendant's motion to withdraw his guilty plea.[4] Mejia maintains that Correa was the mastermind behind the kidnapping scheme because he owed one million dollars for a debt. (Def's Mem. at 2.) Mejia claims Correa paid him $100,000 to help with the plan, and Mejia says he accepted the offer because he needed money for an operation for his mother in Mexico. (*Id.* at 4, Ex. A.) Because he did not take Correa

[4]The Government and defense offered evidence into the record, but only Mejia testified at the hearing.

against his will, Mejia asserts that he did not violate the hostage taking statute and therefore should be allowed to withdraw his guilty plea. (*Id.* at 2.)

After considering the evidence presented at the hearing, this Court makes the following findings of fact:

- Mejia did not make a credible assertion of his own innocence; and,
- Mejia's guilty plea was voluntarily, knowingly and intelligently given, and none of the reasons he offers for withdrawing his guilty plea are supported by fact to represent a fair and just reason for withdrawal.

Because Mejia did not meet his burden, the Court need not address whether the government would be prejudiced by the withdrawal.

DISCUSSION

Mejia contends that Federal Rule of Criminal Procedure 11(d) permits him the right to withdraw his guilty plea. Rule 11(d) reads in pertinent part:

> A defendant may withdraw a plea of guilty or nolo contendere . . . after the court accepts the plea, but before it imposes sentence if . . . the defendant can show a fair and just reason for requesting the withdrawal.

While "motions to withdraw guilty pleas made before sentencing should be liberally construed in favor of the accused and should be granted freely," *Government of the Virgin Islands v. Berry*, 631 F.2d 214, 219 (3d Cir. 1980), a guilty plea before sentencing is not automatically withdrawn at a defendant's request. *United States v. Brown*, 250 F.3d 811, 815 (3d Cir. 2001) (citing *United States v. Martinez*, 785 F.2d 111 (3d Cir. 1986)). "Acceptance of a motion to withdraw a plea of guilty lies within the sound discretion of the trial court and its determination will only be disturbed where it has abused its discretion." *United States v. Vallejo* , 476 F.2d 667, 669 (3d Cir. 1973) (citing *United States v. Stayton*, 408 F.2d 559, 561 (3d Cir. 1969)).

In evaluating a motion to withdraw a guilty plea, the Third Circuit has identified three factors for the court to consider: (1) whether the defendant asserts his innocence, (2) whether the government would be prejudiced by withdrawal, and (3) the strength of the defendant's reasons for moving to withdraw. *Brown*, 250 F.3d at 815. The defendant bears the burden of demonstrating that "fair and just" grounds exist for withdrawal. *Berry*, 631 F.2d at 220. The government bears the burden of showing prejudice, however, only if the defendant demonstrates a fair and just reason for withdrawal. *United States v. Morris*, No. 98-133, 1999 U.S. Dist. LEXIS 13321, at *14 n.12 (E.D. Pa. Aug. 31, 1999). "'A simple shift in defense tactics, a change of mind, or the fear of punishment' are not 'fair and just' reasons to permit the withdrawal of a plea, even when such a withdrawal is requested before sentencing." *United States v. Golden*, No. 00-608-01, 2001 U.S. Dist. LEXIS 15944, at *9 (E.D. Pa. July 27, 2001) (quoting *United States v. Trott*, 779 F.2d 912, 915 (3d Cir. 1985)).

An assertion of innocence by the defendant weighs heavily in favor of granting a plea withdrawal, provided the assertion is "'buttressed by facts in the record that support a claimed defense.'" *Brown*, 250 F.3d at 818 (quoting *United States v. Salgado-Ocampo*, 159 F.3d 322, 326 (7th Cir. 1998)). A defendant's assertions during the guilty plea colloquy constitute such facts, *Golden*, 2001 U.S. Dist. LEXIS 15944, at *11, and if the defendant admitted guilt when he entered a guilty plea, he should give "sufficient reasons to explain why contradictory positions were taken before the district court and why permission should be given to withdraw the guilty plea and reclaim the right to trial." *United States v. Jones*, 979 F.2d 317, 318 (3d Cir. 1992), *superceded by statute on other grounds as stated in United States v. Roberson*, 194 F.3d 408 (3d Cir. 1999). In *United States v. Ballard*, No. 03-810, U.S. Dist. LEXIS 14455, at *21 (E.D. Pa. July 19, 2005), the court granted a defendant's request to withdraw his guilty plea where the defendant "credibly asserted his

innocence" by disputing the factual basis of the charge at issue at the plea hearing and thereafter. A similar conclusion was reached in *United States v. Artabane*, 868 F. Supp. 76, 78 (E.D. Pa. 1994), where the defendant asserted a coercion defense throughout the litigation, including at his guilty plea hearing.

Unlike the courts in *Berry* and *Artabane*, this Court finds Mejia's assertion that Correa orchestrated his own kidnapping lacks credibility. Mejia has had ample opportunity to disclose Correa's involvement in the kidnapping scheme in the twelve months since his arrest and detention. Yet, he never raised any issue as to Correa's status as a victim until five days prior to sentencing. It is not surprising then that defendant's responses during his tape-recorded and *Mirandized* confession in October 2004 directly contradict his recently asserted allegations: Mejia identified Santiago as the "ring leader" of the conspiracy and kidnapping scheme (Def. Interview Tr. 1-2, Oct. 11, 2004), denied ever knowing Correa's name prior to the kidnapping (*id.* at 5, 6), and stated "nobody else" was involved in the scheme but Santiago, Villegas and him (*id.* at 7-8). Mejia explicitly acknowledged his guilt:

> Agent: Anyhow, [Villegas] is involved even though he doesn't know all the details.
>
> Angel Mejia: Like I told you, the three of us is guilty, but maybe he is less guilty and I am guiltier, because I took the kid. But it is clear that the three of us, Alexis, Jose, and I are guilty. Like I told you, I am going to plead guilty, and Alexis is going to do the same.

(*Id.* at 23.) Likewise, at the guilty plea hearing Mejia testified under oath and fully admitted to the summary of the facts and evidence presented by the AUSA which referenced Correa only as a victim:

> The Court: Very well. Mr. Mejia, did you understand the summary rendered by the Assistant United States Attorney, Ms. Mann?

The Defendant: Yes.

The Court: Do you admit to committing this series of crimes?

The Defendant: Yes, sir.

The Court: You fully admit these facts to be true and correct?

The Defendant: Yes, sir.

(Plea Hr'g Tr. at 17-18.) Mejia never contested the government's characterization of the facts and never disclosed that Correa was anything other than a victim.

Mejia did testify on direct examination at the evidentiary hearing Correa was involved in the kidnapping. (Mot. Hr'g Tr. at 5-16.) The Court, however, finds this testimony feeble in light of his clear admission on cross-examination that he was factually guilty of the kidnapping:

> Ms. Mann: On June 20, 2004, when I recited to the Judge all the facts surrounding Carlos' kidnapping, you admitted those facts and said they were true when the Judge asked you that, correct?
>
> The Defendant: Yes, correct.
>
> Ms. Mann: And now you're saying that's not true?
>
> The Defendant: The facts that were told about what happened between October 8th and October 11th are the facts that had to do with the kidnapping and those were true, because that's what happened.

(Mot. Hr'g Tr. at 28.) As a result, this court finds that Mejia has not adequately asserted a credible claim of innocence.

Mejia offers two claims to support his Motion: (1) he never committed hostage taking because Correa planned his own kidnapping and (2) his plea was not voluntary because he believed Correa would disclose his involvement and he feared for his and his family's safety. This Court has considered each of Mejia's arguments and finds them unconvincing.

Mejia's claim Correa was the "ring leader" behind the kidnapping scheme is inconsistent with Mejia's sworn testimony during his guilty plea colloquy and his *Mirandized* confession. The defense, nonetheless, argues the lack of evidence of forced entry and the consistency in Mejia's statements regarding Correa's involvement after entering his guilty plea are evidence of Correa's invovlement.[5] Mejia emphasizes Correa's residence was accessible through an open window. The Government aptly notes forced entry is not one of the statutory elements of hostage taking. *See* 18 U.S.C. § 1203 (hostage taking statute). Likewise, the fact Mejia's version of the events told to the probation office, which identified Correa as the ring leader, is consistent with his verified statement is unpersuasive. (Def's Mem. at 3). This Court must view Mejia's statements made *after* the guilty plea hearing in light of the significant time Mejia faced for the charged offenses. Mejia's own testimony at the evidentiary hearing supports this conclusion:

> Q. . . . After you pled guilty, you then began to have some regrets, correct? And you knew you were facing a lot of time, correct?
>
> A: Yes.
>
> Q: And you had a lot of time to think over at the Federal Detention Center, correct?
>
> A: Yes.
>
> Q: And you were concerned about now undoing the guilty plea, correct?
>
> A: Not just to undo it, but just to find a solution to this problem.

(Mot. Hr'g Tr. at 25-26.) "[F]ear of punishment," though, is "not [an] adequate reason[] to

[5] The Court finds Mejia's remaining arguments for circumstantial evidence (i.e., Correa's failure to provide a victim statement to probation, limited education, prior employment relationship with Mejia's family) are patently meritless.

force the government to incur the expense, difficulty and risk of trying a defendant who has already acknowledged his guilt before the court." *Jones*, 979 F.2d at 318. Therefore, this Court accords no weight to Mejia's claim Correa planned his kidnapping.

Mejia also cannot demonstrate his decision to plead guilty was anything but knowing, intelligent and voluntary. Under Federal Rule of Criminal Procedure 11, before accepting a plea, this Court must ensure a guilty plea is not the result of force, threats, or promises apart from the plea agreement which the defendant has signed. A review of the transcript from the guilty plea hearing reveals the defendant was specifically asked about the circumstances surrounding his decision to plead guilty:

The Court:	Is it your desire to plead guilty to these charges?
The Defendant:	Yes, sir.
The Court:	Is this decision to plead guilty being made of your own free will?
The Defendant:	Yes, sir.
The Court:	Has anybody threatened you to get you to plead guilty?
The Defendant:	No, sir.
The Court:	Promised you anything to get you to plead guilty?
The Defendant:	No, sir.
The Court:	Do you feel pressured in any way to plead guilty?
The Defendant:	No, sir.
The Court:	And whose idea is it to plead guilty to this nine-count superseding grand jury indictment?
The Defendant:	Mine, and only mine.

(Plea Hr'g Tr. at 33-34.) These statements, made voluntarily and under penalty of perjury, clearly refute defense's current claim Correa made a promise to come forward about his involvement if Mejia was arrested (Mot. Hr'g Tr. at 29.) *See United States v. Bowman*, 348 F.3d 408, 417 (4th Cir. 2003) (holding a court is entitled to rely on the defendant's statements made under oath). This Court finds incredible Mejia's claim that until recently he "was trusting that [Correa] would live [up] to [his] part of his agreement" because Correa testified *against* Mejia at an earlier hearing. (Government Reply at 6.) At no point in the many months since Mejia's arrest has Correa retracted his version of the events.

Likewise, this Court finds Mejia's claim he feared for his and his family's safety not credible because he explicitly denied any threats during his colloquy. Mejia affirmed on cross-examination that if he had remained in Mexico after the claimed receipt of the $100,000 payment from Correa, which this Court deems incredible, his safety concerns admittedly would have been moot. (*Id.* at 17.) This Court thus finds Mejia has not asserted any valid reason for withdrawing his guilty plea.

Since Mejia has failed to meet his burden in demonstrating there is a fair and just reason to withdraw his guilty plea, and because he has not made a credible assertion of his innocence, the government need not show it would be prejudiced if the defendant were permitted to withdraw his plea. *United States v. Harris*, 44 F.3d 1206, 1210 (3d Cir. 1995).

Accordingly, I enter the following:

ORDER

AND NOW, this 6th day of October, 2005, it is hereby ORDERED that Defendant's Motion to Withdraw Guilty Plea (Document 71) is DENIED.

BY THE COURT:

\s\ Juan R.Sánchez
Juan R. Sánchez, J